

FRAUD ASSESSMENT COMMISSION

Summary Meeting Minutes
Thursday, January 8th 2008
Rancho Cucamonga, California

Attendees: William Zachry, Chairman; and Commission Members Darlyn Regan, Jiles Smith and Lilia Garcia.

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch; Rick Plein, Fraud Division Bureau Chief, Workers' Compensation; and Vanessa Himmelblau, Senior Staff Counsel, CDI Legal Division.

Chairman Zachry called the meeting to order and remarked he wanted to make a clarification to the minutes. "The original assessment was going to be \$29 million less carryover," stated Zachry. However, due to the funding cycle, district attorneys cannot predict their carryover amount. The Chairman asked for a motion to approve the meeting minutes as corrected.

Motion

Commission member Jiles Smith made the motion to fund at \$29 million and then 60 days after the funding cycle, the district attorneys will reconcile and return any unspent monies. The carryover will become part of next year's funding cycle.

Commission member Darlyn Regan seconded the motion.

Action

The motion passed unanimously.

Dori Rose Inda addressed the Commission and provided an update to the Workers' Compensation Enforcement Collaborative from the Watsonville Law Center (WLC).

The Collaborative continues to work on two main goals. First, to improve the methods to help injured workers access benefits, and second, to improve employer fraud reporting and enforcement.

While gathering information, the Watsonville Law Center identified impediments to the aforementioned issues. The first impediment is that the Division of Labor Standards Enforcement (DLSE) responsibilities within the Labor Code, focuses on criminal provisions and sanctions of workers' compensation laws and not on civil claims of individual employees.

Secondly, workers' compensation claims are under the jurisdiction of the Division of Workers' Compensation (DWC). Ms. Inda noted that both the DWC and DLSE should be required to share relevant information.

With respect to improving employer fraud reporting, Ms Inda noted that the Watsonville Collaborative participates with the Commission on Health and Safety and Workers' Compensation (CHSWC) Fraud Task Force on the Employer Premium Fraud Working Group.

Locally, the Collaborative has seen an increase in reporting by the California Applicant Attorney Association in the Monterey County area.

Ms. Inda commented the Watsonville participants attended a presentation on the Electronic Adjudication Management System (EAMS), which has the capacity to isolate cases that don't exist in the workers' compensation enforcement system. There is a possibility of creating an MOU with the Department of Insurance to facilitate reporting of claims administrators who are not providing benefits or employers who are not reporting claims.

Chairman Zachry reported he had spoken with John Duncan, Director, Department of Industrial Relations, and the duration of time between the injury and first payment of benefits for the Uninsured Employer Fund (UEF) has improved. "But your efforts have been very much appreciated in terms of bringing such a diverse group together and in terms of trying to make the safety net work for the injured workers. I think that's been very good, very positive," stated Chairman Zachry.

Commission member Garcia raised the issue as to whether or not the Collaborative has utilized the Labor Code section requiring that an employer notifies an employee within the first two weeks of employment. The section can provide "some teeth" to enforcement on behalf of workers. Dori Rose Inda appreciated the information and Watsonville Law Center will research the Labor Code for its applicability.

Christine Baker, Executive Director, Commission on Health & Safety and Workers' Compensation provided an update on the research study being conducted by Navigant.

Due to the receipt of inconsistent formats and missing information from over 100 insurers, Navigant was required to manually review 14,600 bills to identify the type of provider based on the provider name and address and/or procedure for billing. "In mid-January, they will begin the survey of injured workers to verify they received the medical services billed and paid per the sample bill," reported Baker.

The department has agreed to extend the deadline for submission of the draft report to April 30, 2008 and the final report is due May 15, 2008. Additionally, Navigant will submit a status report in March which will highlight the kind of information and data being provided in the draft report so the department will have some knowledge in the event of inquiries from the Legislature.

Deputy Commissioner Banda raised the issue of the Senate providing a two-year expenditure authority (instead of a permanent authority) because they want to see the results of the study. “We need to do everything we can to ensure that we meet the deadline,” directed Deputy Commissioner Banda.

Frank Neuhauser, University of California, Berkeley, addressed the Commission regarding the extension of the study to cover data from 1997 through 2005. Mr. Neuhauser worked with the Workers’ Compensation Insurance Rating Bureau to compile data through 2005. The study will address other questions such as whether the employers change their behavior, reduce the amount of fraudulent underreporting, avoid workers’ compensation, or change the way they classify employees.

The FAC continued discussion about the cost of the study (\$39,361) which was approved at the last meeting and included in the current year’s budget. Mr. Neuhauser reported the draft study should be available in March and the final in June of this year.

Mr. Neuhauser raised the issue of whether or not the FAC wanted to fund an aggressive and complex study to examine what portion of the economy is actually an underground economy. This study would need to involve Employment Development Department (EDD) and the Division of Labor Standards Enforcement (DLSE). The commitment of resources would be on the level of the current Navigant study and would begin with a Request For Proposal.

Chairman Zachry remarked he wished to create a sub-committee from within the FAC to work on this concept and bring back a recommendation to the next FAC meeting.

Commissioner Garcia raised the issue that it was evident that there’s significant fraud throughout the State. Commissioner Garcia further stated her concerns about resources going into studies that are not concretely connected to enforcement and prosecutions.

Deputy Commissioner Banda noted that since the passage of AB 202 in 2000, the Fraud Division has been an active member of the Underground Economy Task Force, which is under the direction of EDD.

The Chairman requested that a representative from EDD attend the next meeting and update the Commission on their efforts. Bureau Chief Plein will invite a member of the Underground Economy Task Force to attend the next meeting and address the Commission.

Carrie Nevans, Administrative Director, Division of Workers’ Compensation, addressed the Commission regarding nutritional food supplements and compound drugs. Since 1999, medical fee statements have contained information that nutritional food supplements are prohibited unless they are for a documented nutritional deficiency and claims people should be citing utilization review only if there is already laboratory documentation of the nutritional deficiency due to the injury.

Ms. Nevans commented that physicians are distributing compound drugs. Some companies are manufacturing them and making them available to doctors. By combining a couple of medications, physicians create something new that does not have an NDIC code. This procedure is similar to the repackaged drugs issue.

The final issue presented to the FAC is the supplemental job displacement voucher form. Ms. Nevans noted that DWC is aware of schools that are actually filling out the entire form and submitting it for payment. This process is contrary to DWC regulations and payment of the voucher is denied because it must be initiated by the claims administrator and returned by the injured worker.

Discussion ensued as Ms. Nevans noted that DWC was working with the Watsonville Law Center to assist workers to initiate the process more quickly. Ms. Nevans recognizes that some ideas would require legislative changes.

Chairman Zachry remarked that DLSE has the capacity to shut a company down when there is no proof of workers' compensation insurance. A concept to explore would be to provide the same authority to the Fraud Division of the Department of Insurance.

Fraud Division

Deputy Commissioner Dale Banda, Enforcement Branch, addressed the FAC. The first item was the passage of AB 1401, effective January 1, 2008. Although this legislation does not directly relate to workers' compensation, it is noteworthy that the industry requested training on current schemes, trends, investigative tools, etc. Additionally, the industry was most curious about the vacant peace officer positions—what are we doing, what is the vacancy rate and so forth, noted Banda. Deputy Commissioner Banda is currently working with Human Resources to get the information to the public by placing it on the Department's website.

This fiscal year, the department experienced two significant disasters—first, the Angola fires in South Lake Tahoe and second, the wildfires in Southern California. The department worked closely with the district attorneys, Contractors State Licensing Board and other entities to proactively decrease false claims and scams.

The Task Force wanted to assist the public regarding potentially known insurance scams. "We actively investigated, conducted surveillance of known fraud informants and proactively responded to those scams. We felt we increased safety for the public through an active law enforcement presence within the designated disaster areas," stated Deputy Commissioner Banda.

Deputy Commissioner Banda publicly thanked San Diego, San Bernardino, Riverside, Los Angeles and El Dorado counties for their extra efforts during the disasters. In the Angola fires, eleven arrests were made regarding unlicensed and/or uninsured contractors. In Southern California, sixteen (16) arrests were made. The arrest numbers would have been significantly higher if the Task Force had not already publicized they

were conducting sting operations. This is a great illustration that law enforcement presence alone can be a deterrent. In fiscal year 2006-07, convictions and chargeable fraud increased. In fact, for every dollar of funding, we had six dollars of chargeable fraud.

“I want to thank Commissioner Steve Poizner because he authorized us to go out onto the front lines. At any given time, we had over 180 investigators in the field in Southern California. The Commissioner felt it was extremely important to respond to the disasters, to provide support to the DAs and to the public,” stated Banda.

Deputy Commissioner Banda presented the Insurance Commissioner’s Strategic Plan to the FAC. The first objective is to create an anti-fraud Advisory Task Force to identify ways to fight insurance fraud and maximize CDI resources. The Advisory Task Force has been meeting with focus groups in various venues and is hoping to submit the report in March of this year.

The second objective within the Strategic Plan, which is in line with the Fraud Assessment Commission’s Goals and Objectives, is to maximize enforcement resources by developing an effective, responsive, prioritization process and develop measurement criteria to monitor success.

The last area Deputy Commissioner Banda addressed was an overview of Special Investigative Unit (SIU) compliance. As long as you have a license to transact insurance in California, you are required to submit to the Fraud Division an annual SIU report. The report provides basic information on how well the insurance company is doing with their anti-fraud efforts. In the Fraud Division, the SIU reviews the documentation submitted and, ultimately, audits the insurance companies for their compliance to the SIU regulations.

The issue was raised as to whether or not the SIU audit information is public. Currently, the department does not release that information to the public. However, Deputy Commissioner Banda did address common audit findings: 1) not all suspected fraud is identified or referred, 2) the company SIU fails to properly document the investigation, 3) there is a decreasing number of referrals, 4) omissions exist in the submitted FD-1 referral form, 5) SIUs fail to meet the 60 day referral deadline to report there is reasonable belief insurance fraud exists, 6) SIUs do have written investigation procedures, 7) not all SIU staff receive the required, continuing, anti-fraud training, and 9) anti-fraud personnel do not receive new hire orientation.

Rick Plein, Bureau Chief, Workers’ Compensation Insurance Fraud Program, reported on a few program accomplishments, during the last quarter, due to the joint efforts of the division and the district attorneys.

Ventura County had a premium fraud conviction where a construction firm owner was sentenced to two years in prison, five years’ probation, and the co-owner was sentenced to 240 days in jail, three years’ probation with restitution of \$146,000.

Also, in San Bernardino County, a construction firm owner was convicted of premium fraud for underreporting and misclassifying employees. She was sentenced to 365 days in jail, five years' probation and \$1,475,000 in restitution.

A Placer County case, prosecuted by Amador County, (through a joint agreement), involved two supermarket managers convicted of workers' compensation fraud. The managers allegedly encouraged injured workers not to file workers' comp claims. Both managers were sentenced to 45 days in jail, three years' probation, and one was fined \$13,500, and the other fined \$2,500.

The last accomplishment shared with the FAC is a case from Sacramento County. A jury found a former correctional officer guilty of 14 counts of fraud, including workers' compensation fraud and pension fraud, following a six-week trial which included seven days of deliberation. "She is scheduled to be sentenced early this month," stated Plein.

Chairman Zachry raised the issue of the revised response letter, from the Fraud Division, which utilized the phrase "lack of resources". Bureau Chief Plein remarked that the old response letter was changed and removed. The newly revised letter is currently in the system and active.

Deputy Commissioner Banda added that each SFC is reviewed by Fraud Division and district attorneys as required by law. Although some SFCs submitted reflect certain fraud indicators, they do not rise to the threshold to pursue a prosecution.

District Attorneys

Chairman Zachry requested background clarification from Dominic Dugo, San Diego County, on last year's proposal as to what happens when an employer fails to provide workers' compensation coverage.

Mr. Dugo remarked that this failure is a misdemeanor in the eyes of the law. However, if an employer lies about their payroll for premium purposes, that is a felony. Discussion continued regarding the fact that during the last legislative session, the district attorneys were unable to find an author for the wobbler bill.

Gary Fagan, San Bernardino County and California District Attorneys Association (CDAA), Insurance Fraud Sub-Committee co-Chair, reported that in preliminary discussions with the CDAA membership, they agreed to continue their support of the wobbler language. Additionally, Alameda County has a 2-year bill to adjust the statute of limitations to insure appropriate prosecution of fraud in California.

Motion

Commission member Smith made the motion to support the wobbler language being used to determine a misdemeanor or felony with the willfully uninsured.

The motion was seconded by Commission member Garcia.

Action

The motion passed unanimously.

Motion

Commission member Regan made the motion to support the CDAA's efforts to adjust the statute of limitations of Penal Code Section 1203.044 to insure appropriate prosecution of fraud in California.

The motion was seconded by Commission member Smith.

Action

The motion passed unanimously.

Gary Fagan raised the issue of dual reporting. Mr. Fagan noted that with dual reporting, both CDI and the district attorneys have an opportunity to review the suspected fraudulent claim. "And I don't believe that to be the practice statewide when Suspected Fraudulent Claims (SFCs) are received by the department. For example, CDI conferences with the district attorneys before a decision is made as to whether or not an SFC is likely to result in a prosecutable case. Part of that's just logistics—the volume and the desire to move them forward; however, one of the pluses is to have the two entities review it and use their resources for dual reporting that we don't have in the other programs," stated Fagan.

Mr. Fagan raised the issue that the CDAA training in October was very successful. It was the first time the training ran three tracks simultaneously. The overall comments were positive.

Another issue raised by Mr. Fagan related to the district attorneys' annual information provided to the Department of Insurance and the Fraud Assessment Commission. Mr. Fagan remarked that the district attorneys were not receiving feedback by way of analysis—what's happening in each county, what is each region doing and what are the trends for each county. Mr. Fagan noted that the district attorneys were not trying to set the agenda for the Department of Insurance or tell them how to do their job, but in order to continue evolving in the program, we need to ask the questions "what?" and "where are we going?" "And so I'd encourage return to that type of dialogue," commented Fagan.

Chairman Zachry made several comments on the meeting. First, the district attorneys will be submitting Request-for-Application for grant funding. One observation is that half-time staff working on more than one program is very difficult for efficiency. A long term goal for the program is to fund full-time investigators and attorneys.

Another observation is that, historically, the self-insured community is not required to have Special Investigative Units (SIUs). "This is a perceived weakness that comes from

that process,” stated Zachry, and appropriate identification and reporting of fraud by the self-insured community is important to the process.”

Mr. Fagan’s idea to analyze the data being submitted by district attorneys is appropriate and should be taken into consideration.

A sub-committee will review the FAC website and make suggestions as to what to add to revitalize the information. Commission members Darlyn Regan and Lilia Garcia will provide information on their progress at the next FAC meeting.

Chairman Zachry thanked all the participants and recognized Senior Legal Counsel Vanessa Himelblau for her ongoing legal support.

“We all have the same goal in terms of trying to stop fraud in California, and I think that working together, we can be very successful in doing so,” stated Zachry.

Bureau Chief Plein mentioned that the RFAs would be sent to all 58 counties in California the first week of February. An information meeting on the process for all grant programs is scheduled for March 13, 2008 in Sacramento.

Chief Dave Goldberg introduced two new members from the Riverside County District Attorney’s Office—Chief Deputy Dianna Carter and Supervising Head Deputy Mike Silverman.

Dennis Bauer, Orange County, introduced a new supervisor, Steve Yonemura and Jimmie Harris is the new district attorney in charge of the undercover Unit—the GIFT program.

Motion

Commissioner Jiles Smith made the motion to adjourn.

Commissioner Lilia Garcia seconded the motion.

Action

The motion passed unanimously.

The meeting adjourned at 12:06 p.m.